TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1896.

No. 635.

THE FIRST NATIONAL BANK OF LOUISVILLE, APPELLANT,

vs.

THE CITY OF LOUISVILLE.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF KENTUCKY.

FILED DECEMBER 12, 1896.

(17,220.)

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., DECEMBER 13, 1898.

1 Proceedings of the circuit court of the United States for the district of Kentucky, at its regular term, begun and held at the Federal court hall, in the city of Louisville, on 21st day of February, 1898.

Present: Hon. John M. Harlan, circuit justice; Honorables W. H. Taft and H. H. Lurton, circuit judges.

FIRST NATIONAL BANK, Complainant,
versus
CITY OF LOUISVILLE, Defendant. } No. 6576.

Be it remembered that heretofore, to wit, on April 17, 1897, came the complainant, First National Bank, by its counsel, Helm and Bruce, and filed in the clerk's office of our said court their bill of complaint and exhibits against the above-named defendants, City of Louisville; which bill of complaint is in the words and figures as follows, to wit:

2 To the judges of the circuit court of the United States for the sixth circuit and district of Kentucky:

First National Bank, a citizen and resident of the State of Kentucky, brings this bill against the City of Louisville, a corporation of the State of Kentucky deriving its rights and powers from the statute law of Kentucky duly enacted for the government of cities of the first class; and thereupon your orator complains and says that it is a corporation duly chartered and organized under the acts of Congress of the United States, and especially under the acts in relation to national banks, commonly known as the national banking act, on the 22 day of October, 1863, and its charter rights under its said organization lasted for twenty years, and its charter life was extended and renewed for twenty years, from Sept. 6, 1882, in the manner provided by said national banking acts.

Your orator shows that it has all the powers, privileges, and immunities granted by said national banking acts to banks incorporated and organized thereunder, and is and has been, since its organization, engaged in the banking business in the city of Louisville, Kentucky.

The defendant The City of Louisville is a municipal corporation deriving all its rights and powers from a statute law of Kentucky duly passed for the government of cities of the first class.

Par. 2. Your orator shows that prior to the passage of the revenue law by the General Assembly of the Commonwealth of Kentucky approved May 17, 1886, known as the "Hewitt bill," and hereafter more particularly set out and for brevity called the "Hewitt bill," the law of said Commonwealth governing the taxation of banks was very unsatisfactory in this, to wit, that there were four banks chartered by said State prior to the year 1856 which held charter contracts beyond the power of the State to repeal. Said banks are hereafter referred to as the "old banks." These banks had a large

capital and divers branches, and came into immediate and direct competition with the other banks of the State. The court of appeals of Kentucky, the court of final resort in that State, had several times construed said contracts and held that they were beyond the power of legislature to repeal. By their said contracts with the State each of these banks could discharge itself of all taxation—State and local, such as county, city, and district tax—by the payment of fifty cents on each share of its stock of the par value of $100, and this payment of fifty cents on each share of stock the Commonwealth was by its contract bound to receive in full payment of its claim for taxation upon all the different kinds of property of said bank.

In addition to this complication with the old banks, the national banks in the State were claiming the right to be put upon a footing as to taxation upon an equality with the four old banks, and as the capital of the four old banks was about equal to the combined capital of all the other State banks, the courts of Kentucky had held that they could not be subjected to a heavier burden of taxation.

No other bank in the State could be taxed at a materially higher rate without practically driving it out of business, as it would thereby be unable to compete with the said four old banks and the national banks, and for this reason by express provisions of the respective charters granted by the State, as by the general law, all the banks and other institutions of loan or discount were taxed at the same rate as the old banks and national banks. The State being dissatisfied with the existing tax rate against the banks and similar corporations, desired to increase the rate, but much desired, for the reason above referred to, to have the tax rate on all the banks in the State uniform, which could only be done by exempting them from local taxation and increasing their tax to the
3 State. And as it was not within the power of the State to increase the tax rate against the old banks except with their consent, they were asked in the interest of uniformity to consent, and, in the interest of uniformity and to secure to the banking interests in the State repose on the tax question for the remainder of their respective charter lives, the old banks did consent in the manner hereafter described to the scheme of taxation hereafter more particularly described. Accordingly the General Assembly of the Commonwealth of Kentucky, as a part of its revenue bill entitled "An act to amend the revenue laws of the Commonwealth of Kentucky," approved May 17, 1886, enacted provisions concerning the taxation of banks substantially as follows:

1st. It declared that the shares of stock in State and national banks, and other institutions of loan or discount, and in all corporations required by law to be taxed on their capital stock, shall be taxed seventy-five cents on each share thereof equal to one hundred dollars, or on each one hundred dollars of stock therein owned by individuals, corporations or societies, and said banks, institutions, and corporations, shall, in addition, pay upon each one hundred dollars of so much heir surplus, undivided surplus, undivided

profits, or undivided accumulations, as exceeds an amount equal to ten per cent. of their capital stock, the same rate of taxation that is assessed upon real estate, which shall be in full of all tax, State, county, and municipal. For the purpose of ascertaining such surplus, undivided profits, or undivided accumulations, it was provided that the auditor might at his option investigate the books of the bank, institution or corporation. And it was further provided that any officer having in charge the affairs of such bank, institution or corporation who should refuse, when duly called upon for the purpose, to allow his books to be investigated, should be subject to indictment in the Franklin circuit court, or the circuit court of the county wherein said bank, institution or corporation shall be located, and, upon conviction, should be fined not less than five hundred dollars and not more than one thousand dollars.

It was further provided that the cashier of the bank, and the treasurer of any other institution or corporation, whose stock is taxed, should, on the first day of July in each year, report to the auditor of public accounts the true amount of the capital stock, and the true amount of surplus, undivided profits or undivided accumulations, and how or in what said surplus, undivided profits, or undivided accumulations is invested, and pay into the treasury the amount of tax due.

It was further provided that if such tax be not paid, the cashier and his sureties should be liable for the same and twenty per cent. upon the amount, and any State bank, institution or corporation should thereby forfeit the privilege of its charter.

The fourth section of said act is as follows:

"That each of said banks, institutions and corporations, by its proper corporate authority, with the consent of a majority in interest of a quorum of its stockholders, at a regular or called meeting thereof, may give its consent to the levying of said tax, and agree to pay the same as herein provided, and to waive and release all right under the acts of Congress or under the charters of the State banks to a different mode or smaller rate of taxation, which consent or agreement to and with the State of Kentucky shall be evidenced by writing, under the seal of such bank, and delivered to the governor of this Commonwealth, and upon such agreement and consent being delivered, and in consideration thereof, such bank and its shares of stock shall be exempt from all other taxation whatsoever so long as said tax shall be paid during the corporate existence of such bank."

Your orator shows that from the 1st day of July, 1887, although it was not by the United States banking acts bound to submit to taxation under the "Hewitt bill," it nevertheless did so, and from said date regularly reported to the auditor of public accounts of the State of Kentucky under and in accordance with the provisions of said "Hewitt bill," and the said State, through its proper officers, received and appropriated said taxes paid by your orator as aforesaid.

Your orator has not, and never had, any real estate.

4 In the way above stated, your orator accepted the provisions of the "Hewitt bill."

Your orator shows that in July, 1893 and 1894, it made its report as usual to the auditor of public accounts in the manner prescribed by the act of May 17, 1886, known as the "Hewitt bill," and tendered the amount of the tax due thereunder, to wit, seventy-five cents on each share of its capital stock equal to one hundred dollars, and also in accordance with said act tendered to said auditor the taxes, at the current rate then assessed upon real estate upon so much of its surplus, undivided surplus, undivided profits or accumulations as exceeded an amount equal to ten per cent. on its capital stock, but said auditor refused to accept the money so tendered, or to receive any more than the current rate of forty-two and one-half cents on the hundred dollars on the valuation fixed by the State board of valuation and assessment provided for in the act of November 11, 1892, hereafter more particularly set out. The amount so demanded by the auditor your orator paid under protest.

Afterwards, on the 1st day of June, 1895, the court of appeals of Kentucky decided in favor of the banks the litigation hereinafter mentioned, and thereafter the auditor of the State demanded from your orator and each of the other banks in the State, for the years 1893 and 1894 the difference between what had been paid under the act of November 11, 1892, and what should have been paid under the act of May 17, 1886, known as the "Hewitt bill," and your orator promptly complied with said demand and paid said difference into the treasury of the State, and for the years 1895 and 1896 your orator made report and payment under the "Hewitt bill" and in accordance with its provisions; and so it is that your orator respectfully shows that it has regularly since and including 1887, and up to the present time, reported to the auditor in the manner provided by said act of May 17, 1886, and has regularly, and within the prescribed time paid its taxes thereunder, except, and for the causes mentioned, during the period above described.

Par. 3. Your orator respectfully shows that early in the year 1894, and before the 4th of May, 1894, the defendant, The City of Louisville, claiming to act under the authority of the statute governing cities of the first class, and of its ordinances adopted in pursuance thereof, demanded of your orator and of every other bank and trust company in the city of Louisville, a tax equal to four per cent. of its gross receipts, and this demand being refused, legal proceedings were commenced in the city court of Louisville in behalf of the city against all of said banks and trust companies, including your orator. At that date the tax upon the gross receipts of the banks, if enforceable, was payable to the sinking fund of the city of Louisville, and with a view of embarrassing the sinking fund of the city as little as possible, the banks, through their committee, held a meeting with the commissioners of the sinking fund, and it was agreed between the city of Louisville and its sinking fund commissioners upon the one part and the banks and trust

companies of the city of Louisville, including your orator, upon the other, that pending the litigation which by the agreement was to be inaugurated, and without prejudice to the right of the banks, they would make payments and loans to said sinking fund as follows:

First. The sinking fund was to accept from each of said banks and trust companies a payment equal to the difference between the amount which the banks and trust companies would have to pay to the State under the present law and the amount which they would be required to pay for State taxes under the provisions of the "Hewitt bill." This sum it was provided should be an actual payment and not be repaid under any circumstances, but its payment was not in any manner, or to any extent to prejudice the banks or trust companies paying it, or be taken as a waiver of any legal right which they might have in the premises.

Second. In addition to making the above payments the banks and trust companies, save those which were to be selected to test the question involved, should each lend to the sinking fund a sum which added to said payment would equal four per centum of its gross earnings during the year 1893, and the sinking fund would execute for said loans its obligations agreeing to repay the same with interest at four per centum per annum, when, and if, it should be finally adjudged by the court of last resort that said banks or trust companies were not liable to pay the license fee required by the ordinance aforesaid, but if it should be finally adjudged that they were liable to pay said license fee, then said loan should be taken and deemed as a payment of said license fee, and the obligation to repay same should be void.

Third. It was agreed that the banks or companies selected to test the questions involved would each lend the sinking fund a sum equal to four per centum of the gross earnings for the year 1893, and would receive therefor the obligations of the sinking fund as above described.

Fourth. It was further agreed that that arrangement was entered into with the understanding that the banks and companies would institute without delay and diligently prosecute such actions as might be necessary to settle and adjudge the right- and liabilities of the parties in the premises, and pending such proceedings the sinking fund would not prosecute them or any of them for doing business without license.

The substance of this agreement was spread at large upon the records of the sinking fund, and a copy thereof is filed herewith as part hereof marked A.

5 As further evidence of the contract at that time made between the city of Louisville and its sinking fund, and the various banks and trust companies of the city, it was agreed in writing by said parties in substance that in order to effectually test the question as to all of said banks and trust companies they were divided into three classes, it being understood that all who accepted the provisions of the said "Hewitt bill" would fall in one or the other of the classes named, to wit:

A. Banks whose charters had been granted prior to 1856.
B. Banks whose charters had been granted subsequent to 1856.
C. National banks.

It was understood that the trust and title companies which had accepted the provisions of the "Hewitt bill" would fall in class B above named.

It was further agreed that if any bank in any class should eventually fail to establish the existence and validity of the contract which it was claimed was made under the "Hewitt bill," that all of that class should thereafter regularly and promptly submit to the existing laws and pay their taxes. And it was also agreed that if any bank of any class should succeed in establishing the contract and the validity thereof under the "Hewitt bill" that that should exempt all banks and companies falling within that class from the payment of taxes, except as provided in the "Hewitt bill."

This agreement was signed by the president of the sinking fund and by the attorney for the city under the authority and direction of the mayor and the board of sinking fund commissioners, and by the counsel who represented the banks in said litigations.

On the faith of this agreement as outlined in the resolution spread upon the records of the sinking fund, and more at large set out in the contract duly executed, the various banks of the city of Louisville including your orator paid into the sinking fund the amounts of taxes claimed against them, under the terms and conditions named in the minutes of the sinking fund commissioners heretofore referred to; and at a still later date, and in further reliance upon said agreement, the said banks and companies, including your orator, except those actually involved in the test cases, paid the whole amount of the taxes claimed as against them by the city of Louisville without reservation, until the question should be finally disposed of. This was done without prejudice to the rights of the banks and trust companies, and was not to be deemed a waiver by the banks or trust companies of any of their claimed rights, but was done to prevent confusion from coming into the management of the sinking fund, as the taxes against the banks claimed by the city had been transferred to the sinking fund of said city. It was agreed that these payments should not last longer than the final decision in favor of the banks if such decision could be rendered.

A copy of the contract aforesaid with the minute aforesaid is filed herewith as part hereof marked A.

Your orator though not bound to do so under the national banking acts, yet in common with the other national banks, and in reliance upon its contract with the State, paid said tax upon its gross receipts.

The amount paid by the banks and trust companies to the city under said agreement is over $150,000, no part of which has ever been refunded by said city.

Par. 4. Your orator further shows that by an act passed by the General Assembly of the Commonwealth of Kentucky on the 11th

of November, 1892, it is provided in substance that every incorporated bank and trust company shall in addition to other taxes imposed on it by law, annually pay a tax on its franchise to the State, and a local tax thereon to the county, incorporated city, town and taxing district where its franchise may be exercised. The auditor, treasurer, and secretary of state is by said act constituted a board of valuation and assessment for fixing the value of said franchise. It is further provided that in order to determine the value of the franchise, the banks and trust companies shall each file reports on or before the first day of March in each year, which reports shall be made up and include the 31st day of the preceding December. These reports it is provided shall be verified by the president, cashier, secretary, treasurer or manager or other chief officer, in such form as the auditor may prescribe, showing the following facts, viz: The name and principal place of business of the company; the amount of capital stock; the number of shares; the amount of stock paid up; the number and real value thereof; the highest price at which such stock was sold at the *bona fide* sale within twelve months next before the 15th day of September of the year in which the statement was required to be made; the amount of surplus funds, and undivided profits, and the value of all other assets; the total amount of indebtedness as principal; the amount of gross or net earnings or income, including interest on investments, the income from all other sources for twelve months next preceding the 15th day of September of the year in which the statement is required; the amount and kind of tangible property in the State, and where situated, assessed or liable to assessment in the State, and the fair cash value thereof, estimated at the price it would bring at a fair voluntary sale; and such other facts as the auditor may require.

6 Upon this information, and such other information as the board can obtain, it is authorized to fix the value, for purposes of taxation, upon the franchise of such banks and trust companies. It is further provided that the auditor of the State at the expiration of thirty days after the final determination of such values, shall certify to the county clerk of the counties when any portion of the corporate franchise of such banks and trust companies shall be liable to local taxation, the amount thereof liable for county, city, town or district tax, and such certificate, it is provided, shall by each county clerk be filed in his office, and be by him certified to the proper collecting officer of the county, city, town or taxing district for collection.

It is further provided that as to banks and trust companies their taxes assessed by the State board of valuation and assessments, as before described, shall be due and payable on the 1st of July succeeding such report.

It is further provided that in the event the banks and trust companies failed to make such report and pay such taxes, a penalty of ten per cent. on the amount of the tax shall attach, and thereafter such tax shall bear interest at the rate of ten per cent. per annum, and any bank or trust company failing to pay its taxes, penalties

and interest after becoming delinquent, shall be deemed guilty of a misdemeanor, and on conviction shall be fined for each day the same remains unpaid, to be recovered by indictment or civil action of which the Franklin circuit court shall have jurisdiction. Your orator further shows to the court that the tax for State and municipal purposes attempted to be imposed upon all trust companies and banks, including your orator, under the present revenue law, approved November 11, 1892, is very much more onerous than the tax imposed under the "Hewitt bill" of May 17, 1886.

And your orator further submits that said scheme of taxation is also in violation of the 181st section of the constitution of the State of Kentucky, which declares that the "General Assembly shall not impose taxes for the purposes of any county, city, town or other municipal corporation, but may, by general laws, confer on the proper authorities thereof respectively the power to assess and collect such taxes."

Your orator respectfully shows that the tax which the city of Louisville is claiming the right and is threatening to collect from your orator has not been assessed by the said city of Louisville, but said pretended assessment has been made or attempted to be made by the State board of valuation and assessment, consisting of the auditor, secretary of state and treasurer of the State.

Your orator further shows that the auditor of the State acting under said pretended authority has heretofore certified said assessments to the county clerk of Jefferson county for the years 1893 and 1894, who in turn has certified the same to the proper tax collecting officer of the defendant, The City of Louisville.

Your orator respectfully shows that the pretended assessment against your orator's franchise by the State board of valuation and assessment for the year 1893 amounts to $898,731.23 and for the year 1894 amounts to $884,726.00. Your orator further shows that the tax rate for the city of Louisville for the year 1893 was $2.17, and for the year 1894 was $1.88, and that said illegal taxes claimed by the defendant, The City of Louisville, upon said pretended assessment for the year 1893 *is* $19,502, and for the year 1894 *is* $16,632, and exceeds the amount which your orator would have to pay under the "Hewitt bill" by over $28,500.

Your orator further shows that the claim of the defendant, The City of Louisville, that it has the right to collect said taxes from your orator by distraint as well as by suit casts a cloud upon your orator's right to pay taxes under and in accordance with its contract contained in the "Hewitt bill," and the claim of the said city of Louisville of its right to collect said taxes by distraint or suit injures your orator's stock and stockholders irreparably.

Par. 5. Your orator respectfully shows to the court that the existing laws of the State of Kentucky do not provide for taxing the shares of your orator as permitted by the act of Congress, but attempts to subject to taxation its franchise granted by the Congress of the United States and its other intangible property, such as its surplus, undivided profits and investments, without lawful right to do so, and contrary to the act of Congress in such cases made and

provided. Your orator has never consented to this method of taxation, but has always protested against the same as illegal and contrary to the act of Congress. And your orator respectfully submits that said statute of the State of Kentucky is repugnant to the act of Congress in such cases made and provided, and because of said repugnancy is void and of no binding force as against your orator.

Your orator further shows that there is no other law of the State of Kentucky providing for the taxation of banks except for the taxation of their tangible property.

7 Your orator further shows and submits to the court that by reason of the formal contract entered into by all the other banks and trust companies in the city of Louisville, and by reason of the former adjudication in favor of said banks and trust companies establishing the validity of said contracts, they will escape local taxation, except on the houses owned by them, respectively, in which they respectively do business, and your orator coming as it does into direct competition with said institutions will be driven out of business if subjected to local taxation, wherefore it respectfully insists that it is protected by the acts of Congress against such unjust discrimination.

To the end, therefore, that your orator may not be subjected to the false claims and suits which will be instituted by the city of Louisville, and that it may be spared the irreparable injury which it will suffer by attempts to collect said taxes by distraint and that its property and its right of contract heretofore fully stated shall not be subjected to an illegal cloud, your orator prays for a writ of subpœna against the defendant, The City of Louisville, to appear and make full and true answer to this bill (but not under oath, answer under oath being hereby waived), and that an injunction *pendente lite* be granted commanding the said city of Louisville, its officers and agents to refrain from endeavoring by distraint or by suit or otherwise from collecting or attempting to collect any of the taxes heretofore certified to it as aforesaid, or any part thereof, based upon the illegal assessment against the franchise of your orator until the final order and determination of this court, and that upon such final hearing a decree be made establishing the contract right of your orator to be taxed in the method prescribed by the act of May 17, 1886, known as the "Hewitt bill," and not otherwise, and perpetually enjoining the defendant, The City of Louisville, from collecting or attempting to collect by distraint, suit, or otherwise, the illegal taxes aforesaid improperly assessed against your orator's franchise and properties aforesaid, and from collecting any of said taxes or claimed penalties in behalf of said city, and for all general, equitable and proper relief to which your orator may be entitled.

HELM & BRUCE,
Solicitors for Complainant.

G. W. Lewman says he is president of complainant, and that the statements contained in the foregoing bill are true.

G. W. LEWMAN.

Subscribed and sworn to before me by G. W. Lewman, this 17 day of April, 1897.

ARTHUR PETER,
Notary Public for Jefferson County, Kentucky.

My commission expires January 15, 1898.

8 Exhibit "A" with the foregoing bill is as follows:

SINKING FUND OFFICE, *Feb'y* 13, 1894.

A committee consisting of Messrs. Thomas L. Barrett, John H. Leathers, and George W. Swearingen, appeared before the board on behalf of the banks who are members of the Louisville clearing-house, and stated that it was the purpose of said banks to resist the payment of the license fee demanded of them under the license ordinance approved January 29, 1894, on the ground that said banks were not legally liable to pay the same; but in order to save the sinking fund from any embarrassment occasioned by their refusal to pay said license fee, the banks, with two or three exceptions, were willing to enter into an arrangement whereby they would pay a part of the amount demanded of them, and lend the sinking fund the balance thereof, to be repaid with interest at four per centum per annum if it was finally decided and adjudged that the banks were not liable to pay said license fees.

After discussion, the president was, on motion of Mr. Tyler, seconded by Mr. Summers, authorized to enter into the following arrangement with the different banks, trust, and title companies who will be subject to the payment of the license fees if the license ordinance is finally adjudged to be valid and enforceable:

First. To accept from each of said banks and companies a payment equal to the difference between the amount they now pay to the State for State taxes and the amount they would be required to pay for State taxes under the provisions of what is known as the "Hewitt bill." This sum shall be an actual payment, not to be repaid under any circumstances, but its payment shall not in

9 any manner or to any extent prejudice the banks or companies paying it, or be taken as a waiver of any legal right which they have in the premises.

Second. In addition to making the above payments, the said banks ans companies, save those selected to test the question involved, shall each lend to the sinking fund a sum which added to said payment will equal four per centum of its gross earnings during the year 1893, and the sinking fund will execute for said loans its obligations agreeing to repay the same with interest at four per centum per annum when and if it shall be finally adjudged by the court of last resort that said banks or companies are not liable to pay the license fee required by the ordinance aforesaid; but if it is finally adjudged that they are liable to pay said license fee, then the said loan shall be taken and deemed as a payment of said license fee, and the obligation to repay the same shall be void.

Third. The banks or companies selected to test the questions in-

volved will each lend the sinking fund a sum equal to four per centum of their gross earnings for the year 1893, and will receive therefor the obligations of the sinking fund as above described.

Fourth. This arrangement is to be entered into with the understanding that the said banks and companies will institute without delay and diligently prosecute such actions as may be necessary to settle and adjudge the right and liabilities of the parties in the premises, and pending such proceedings the sinking fund will not prosecute them or any of them for doing business without license.

A true copy.

Attest:

J. M. TERRY,
Secretary & Treasurer.

Stipulation between the City of Louisville, the Commissioners of the Sinking Fund of the City of Louisville, and the banks, trust, and title companies of the city of Louisville.

It is agreed between the City of Louisville, the Commissioners of the Sinking Fund of the City of Louisville, represented by H. S. Barker, city attorney, acting under the advice and by the authority of the board of sinking fund commissioners given at a regular meeting of the said board, and the Mayor of the City of Louisville, on the one part, and the various banks, trust, and title companies of the city of Louisville, acting by Humphrey & Davie and Helm and Bruce, attorneys, of the other part—

First. That in February, 1894, it was agreed between the City of Louisville and the Board of Sinking Fund Commissioners, acting together in the interest of the said city, and the various banks, trust, and title companies, acting through their committee, to wit, Messrs. Thomas L. Barrett, John H. Leathers, and George W. Swearingen, and their counsel, to wit, Mess. Humphrey & Davie and Helm & Bruce, that the question of the liability of said banks and trust and title companies to pay municipal taxes, either license or ad valorem, otherwise than as provided by the revenue law, commonly known as the Hewitt bill, should be tested by appropriate litigation looking to that end.

Second. In order to effectually test the question as to all of said companies they were divided into three classes, it being understood that all who had accepted the provisions of the said Hewitt bill would fall in one or the other of the classes named, to wit:

A. Banks whose charters had been granted prior to 1856.

B. Banks whose charters had been granted subsequent to 1856.

C. National banks.

It being understood that the trust and title companies which had accepted the provisions of the Hewitt bill would fall in class B, above named.

Third. In pursuance of that agreement the sinking fund commissioners caused to be issued warrants against the Bank of Kentucky, representing class A; the Louisville Banking Company, rep-

resenting class B, and the Third national bank, representing class C, and these banks respectively applied for writ of prohibition against the city of Louisville proceeding with the hearing, that being the manner pointed out by the city charter for testing the validity of the city ordinances.

It was distinctly understood and agreed at that time, and this agreement was made for the best interest of all parties to it, that if any bank in any class should eventually fail to establish the existence and validity of the contract which it was claimed was made under the Hewitt bill that all of that class should thereafter regularly and promptly submit to the existing laws and pay their taxes; and it was also agreed that if any bank of any class should succeed in establishing a contract and the validity thereof under the Hewitt bill that that should exempt all banks and companies falling within that class from the payment of taxes except as provided in the Hewitt bill.

Fourth. On the faith of this agreement all of the banks and companies aforesaid paid into the sinking fund the amounts of taxes claimed against them under the terms and conditions named
12 in the minutes of the sinking fund commissioners of February 13th, 1894, an attested copy of which is hereto attached as part hereof; but at a later date and in further reliance upon said agreement all said banks and companies, except those actually involved in the test cases, paid the whole of the amount of taxes claimed as against them by the city of Louisville without reservation until the question thus raised should be finally disposed of.

HUMPHREY & DAVIE,
HELM & BRUCE,
For the Banks, Trust, & Title Companies of the City of Louisville.
H. S. BARKER, *City Att'y.*

Approved:
C. H. GIBSON,
Pres't Com'rs Sinking Fund, City of Lou.

A true copy.
Attest: HUSTON QUIN.
ARTHUR PETER.
M. McLOUGHLIN.

And thereupon the following process issued:

The President of the United States of America to the City of Louisville, Greeting:

You are hereby commanded to appear before our circuit court of the United States of America for the district of Kentucky, at the Federal court hall, in the city of Louisville, on the first Monday in June next, to answer a bill in equity exhibited against you in our said court by First National Bank, which you shall in nowise omit, under the penalty of the law.

Witness the Honorable Melville W. Fuller, Chief Justice of the

Supreme Court of the United States of America, and the seal
13 of our said circuit court, hereto affixed at the clerk's office of said court, in Louisville, this 17th day of April, A. D. 1897, and in the 121st year of our Independence.

Attest:

[SEAL.]

THOS. SPEED,
C. C. C., K. D.,
By HENRY F. CASSIN,
His Deputy.

MEMORANDUM.—The defendant is to enter its appearance in the suit in the clerk's office on or before the 7th day of June next, the day at which the writ is returnable; otherwise the bill may be taken *pro confesso.*

THOS. SPEED, *Clerk,*
By HENRY F. CASSIN,
His Deputy.

And the marshal returned same with the following endorsement thereon:

Executed April 24th, 1897, on the City of Louisville by delivering a copy of the within spa. in chancery to Geo. D. Todd, mayor of said city.

JAMES BLACKBURN,
United States Marshal,
By R. E. HAWES, *D. M.*

And on the 27th day of May, 1897, the following stipulation was filed:

In the Circuit Court of the United States for the Sixth Circuit, District of Kentucky.

FIRST NATIONAL BANK, Complainant,
versus
CITY OF LOUISVILLE, Defendant.
} No. 6576. Stipulation.

It is stipulated and agreed that the defendant, City of Louis-
14 ville, may file a demurrer to the complainant's bill and an answer at the same time without waiving the demurrer.

HELM & BRUCE,
Counsel for Complainant.
H. L. STONE,
Counsel for Defendant, City of Louisville.

Said demurrer is as follows:

In the Circuit Court of the United States for the Sixth Circuit, District of Kentucky.

FIRST NATIONAL BANK, Complainant,
versus
CITY OF LOUISVILLE, Defendant. } No. 6576. In Equity.

The Demurrer of The City of Louisville, Defendant, to the Bill of Complaint of First National Bank, Complainant.

This defendant, by protestation, not confessing any or all of the matters and things in the complainant's bill of complaint contained to be true in such manner and form as the same *is* therein set forth and alleged, demurs to said bill, and for cause of demurrer states:

1. That the said bill fails to state facts sufficient to show jurisdiction in this court.

2. That the said bill does not contain any matter of equity whereon this court can ground any decree or give to the complainant any relief against this defendant.

Wherefore, and for divers other good causes of demurrer appearing in the said bill, this defendant does demur thereto, and
15 humbly demands the judgment of this court whether it shall be compelled to make any further or other answer to the said bill, and prays to be hence dismissed with its costs and charges in this behalf most wrongfully sustained.

H. L. STONE,
City Attorney, Solicitor for Defendant, City of Louisville.

I hereby certify, as counsel for the defendant, City of Louisville, in the foregoing demurrer, that in my opinion the same is well founded in point of law and proper to be filed.

H. L. STONE,
City Attorney, Solicitor for Defendant, City of Louisville.

STATE OF KENTUCKY, }
Jefferson County, } *sct:*

Personally appeared before me, John F. Groene, a notary public in and for the county and State aforesaid, George D. Todd, who states that he is mayor and chief officer of the defendant, City of Louisville, and the foregoing demurrer is not interposed for delay of the cause in which it is filed.

GEO. D. TODD.

Subscribed and sworn to before me by said George D. Todd, mayor, this 27th day of May, 1897. My commission expires January 23, 1900.

JNO. F. GROENE,
Notary Public, Jefferson County, Kentucky.

Answer filed on 27th day of May, 1897, is as follows:

16 In the Circuit Court of the United States for the Sixth Circuit, District of Kentucky.

FIRST NATIONAL BANK, Complainant,
versus
CITY OF LOUISVILLE, Defendant. } No. 6576. In Equity.

The Answer of The City of Louisville, Defendant, to the Bill of Complaint of First National Bank, Complainant.

This defendant, now and at all times hereafter, saving and reserving unto itself all benefit and advantage of exception which can or may be had, or taken to the many errors, uncertainties, and other imperfections in the said bill contained, for answer thereunto, or to so much and such parts thereof as this defendant is advised it is material or necessary for it to make answer unto, answering:

This defendant denies that prior to the passage of the revenue law by the General Assembly of the Commonwealth of Kentucky, approved May 17, 1886, known as the "Hewitt bill," the law of said Commonwealth governing the taxation of banks, was unsatisfactory, or that there were then four banks, or any bank, chartered by said State prior to the year 1856, whose original charter life had not expired, or which held any charter or other contract or contracts beyond the power of the State to repeal, or that the Commonwealth was by any alleged contract or contracts bound, beyond its legislative control or power to alter, amend, and repeal, to receive fifty cents on each share of one hundred dollars of stock in said banks, or either of them, referred to as the "old banks," in full of its claim for taxation upon all the different kinds of property of said banks.

This defendant denies that there was any complication with the said old banks, or that in addition to such alleged complication with said old banks, the national banks in the State were claiming the right, or that they had the legal right, to be put upon a footing of equality as to taxation with said four old banks, or either of them, or that the courts of Kentucky had held that the national banks in said State could not be subjected to a heavier burden of taxation than said four old banks.

This defendant denies that no other bank in the State could be taxed at a materially higher rate than fifty cents on each share of one hundred dollars of its stock, without practically driving it out of business, or that it would thereby be unable to compete with said four old banks and the national banks, or that for this reason by the express provisions of the respective charters granted by the State, or by the general law, all banks and other institutions of loan or discount were taxed at the same rate as the old banks and national banks.

17 This defendant denies that the State was dissatisfied with the existing tax rate against banks and similar corporations, or desired to increase the rate, or desired for the reason alleged, to have the tax rate on all the banks in the State uniform, or that this

could only be done by exempting them from local taxation and increasing their tax to the State, or that it was not within the power of the State to increase the tax rate against the old banks except with their consent, or that they were asked, in the interest of uniformity, to consent, or that, in the interest of uniformity, or to secure to the banking interests in the State, repose on the tax question for the remainder of their respective charter lives, the old banks did consent in the manner stated in the bill to the scheme of taxation therein described, or, as stated in the provisions of the act of May 17, 1886, referred to and quoted in the bill.

The defendant states, section six (6), article two (2), of said act of May 17, 1886, pertaining to the taxation of banks, expressly provided that said act (meaning article 2 therein, with respect to the taxation of banks), should be subject to the provisions of section eight (8), chapter sixty-eight (68) of the General Statutes, which was as follows:

"All charters and grants of or to corporations, or amendments thereof, enacted or granted since the 14th of February, 1856, and all other statutes, shall be subject to amendment or repeal at the will of the legislature, unless a contrary intent be therein plainly expressed: *Provided*, That whilst privileges and franchises so granted may be changed or repealed, no amendment or repeal shall impair other rights previously vested."

This defendant states that by said section six (6), article two (2) of the said act of May 17, 1886, the legislature of the State expressed its intention to reserve, and it did in fact reserve, its power to amend or repeal at the will of the legislature of the State, said act of May 17, 1886, or any part thereof, including the scheme for taxation of banks and the exemption of banks, from county and municipal taxes therein provided for, and a contrary intent was not therein plainly expressed.

This defendant further states that by section five (5) of article twelve (12) of said act of May 17, 1886, all other acts, general and special, and parts of acts inconsistent therewith, or not in conformity therewith, were repealed.

This defendant denies that said act of May 17, 1886, and complainant's alleged acceptance thereunder, as provided by said statute, and complainant's payments thereunder and in accordance therewith, to the State of a sum in excess of that paid by individuals to the State on the same kind of property, and the acceptance thereof by the State, constituted a contract between the State on the one part and complainant and its stockholders on the other part, continuing during the legal existence of complainant's corporate life, or that the State was equally bound thereby, or had no right to retire therefrom or amend or repeal the same, as provided for in section six (6), article two (2) of said act of May 17, 1886.

This defendant denies it was agreed between the State and the complainant that said alleged contract should subsist during the charter life of complainant, without the condition or qualification embodied in said section six (6), or that the State of Kentucky was unmindful of its alleged contract obligations with complainant, or

others, when through its General Assembly it undertook, on November 11, 1892, to tax all the banks in the State in a manner different from that provided for in said alleged contract, and to subject them to all manner of local taxation, or that as applied to complainant the tax under the act of November 11, 1892, will exceed the tax which it would have to pay under the Hewitt bill by $28,500.

This defendant denies that the ordinance of 1894, providing for a license tax of four per cent. of the gross receipts or earnings of the banks and trust companies in the city of Louisville, in lieu of an *ad valorem* tax, was adopted under the authority of the statute entitled "An act for the government of cities of the first class," approved July 1, 1893, or in pursuance thereof, although it was
18 claimed that such authority existed when said ordinance was adopted; or that the defendant, on the demand of said license tax being refused, commenced legal proceedings in the city court of Louisville in behalf of the city against all of said banks and trust companies, including the complainant.

This defendant denies that it was agreed between the city of Louisville and the commissioners of the sinking fund of the city of Louisville upon the one part, and the said banks and trust companies, including the complainant, upon the other, that, pending the litigation concerning the validity of said ordinance providing for a license tax upon said banks and trust companies, payments and loans to said commissioners of the sinking fund should be made, in the manner or upon the terms and conditions, as stated in complainant's bill, or that this defendant agreed that said litigation should be inaugurated, or that such alleged payments or loans to said commissioners of the sinking fund should be without prejudice to the alleged rights of said banks and trust companies, or either of them.

This defendant denies that it agreed, as alleged in complainant's bill, to the selection of any bank or company to test the questions involved in said litigation, or that this defendant made, entered into, or was a party to said alleged contract or agreement, written or verbal, with respect to said litigation over the validity of said license tax, or the ordinance providing for the collection thereof from the banks and trust companies in the city of Louisville, or that said banks and trust companies should be divided into three classes, to wit:

A. Banks whose charters had been granted prior to 1856.

B. Banks whose charters had been granted subsequent to 1856.

C. National banks.

This defendant denies that it was understood that the trust or title companies, which are alleged to have accepted the provisions of the Hewitt bill would fall in said class "B," or that this defendant agreed that if any bank in any class should eventually fail to establish the existence or validity of the contract which it was claimed was made under the Hewitt bill, that all of that class should thereafter regularly and promptly submit to the existing laws and pay their taxes, or that this defendant agreed that if any bank of any class should succeed in establishing the alleged contract, or the

validity thereof under the Hewitt bill, that that should exempt all banks and trust companies, or any bank or trust company falling within that or any of said alleged classes from the payment of taxes, except as provided in the Hewitt bill.

This defendant denies that said alleged agreement, an alleged copy of which, or the substance of which is filed with complainant's bill, marked "A," was signed by the attorney for the city of Louisville under the authority or direction of the mayor, or that this defendant executed or delivered said alleged contract or agreement, or that the same was ever authorized, ratified or approved by the general council and mayor of the city of Louisville, and said alleged agreement or contract set forth in said copy marked "A" is not the act and deed of this defendant, and in so far as the same purports to be an agreement or contract by or with this defendant it was beyond the lawful power or authority of the city attorney, mayor, or any other officer of this defendant to execute or deliver for or on behalf of this defendant, and the same was made without express authority of law, and was and is null and void, and of no binding force or effect upon this defendant, nor does the same operate to prevent or defeat the power and authority vested in this defendant by said act entitled "An act for the government of cities of the first class," approved July 1, 1893, to levy and collect its municipal taxes from the complainant and other banks and trust companies.

This defendant states that said commissioners of the sinking fund of the city of Louisville was, in 1894, and long prior thereto, and ever since has been, a separate and distinct corporation from this defendant, organized and existing under the laws of the State of Kentucky, with power to sue and be sued, contract and be contracted with, and to do and perform all things necessary to execute the duties required and powers given by the act incorporating the same and the amendments thereto; but, neither said commissioners of the sinking fund of the city of Louisville, nor the president nor the attorney thereof, nor all of them together, had any lawful power or authority thus to bind or obligate defendant by the terms, conditions, stipulations, or covenants, or either of them, contained in said alleged agreement or contract, at the time, in the manner, or under the circumstances alleged in complainant's bill, or otherwise.

19 This defendant denies that said alleged agreement or contract was duly executed, or on the faith, or in reliance thereon, the various banks and trust companies of the city of Louisville, including the complainant, or either of them, paid into the said sinking fund the amounts of taxes claimed against them, under the terms and conditions named in the alleged minutes of said commissioners of the sinking fund; or that, at a still later date, the said banks and trust companies, except those already involved in the alleged test cases, paid the whole amount of the taxes claimed against them by this defendant, without reservation, until the question should be finally disposed of, or that this was done without prejudice to the alleged rights of said banks and trust companies, or was not to be

deemed a waiver by them of any of their claimed rights, or that the same was done to prevent confusion from coming into the management of said sinking fund, or that the taxes against banks claimed by the city had been transferred to the sinking fund of said city, except as provided for in said license-tax ordinance, which was invalid and unconstitutional, because the license tax aforesaid was, and was intended to be, by said ordinance in lieu of the *ad valorem* tax levied upon all other assessed, individual and corporate, tangible and intangible, property in the city of Louisville, and thus violated the constitution of the State of Kentucky.

This defendant denies that it made any agreement that the said alleged payments to said sinking fund should not last longer than the alleged final decision in favor of the banks, if such decision should be rendered, or that the amount paid by the banks and trust companies to this defendant, or said commissioners of the sinking fund, under said alleged agreement, was or is over $150,000.

This defendant denies that with a view of testing every phase of the question, or so that a decision when rendered would determine the liability of every bank and trust company in the city of Louisville, three suits were brought pursuant to said alleged contract, or that there was any contract with this defendant to do so, or that the Bank of Kentucky in the suit it brought represented the Bank of Louisville, or that the Louisville Banking Company in the suit it brought represented all or either of the other banks and trust companies in the city whose charters were granted by the State since 1856, or that the Third national bank, in the suit brought by it, represented all or either of the other national banks of the city.

This defendant denies that it was a party to the said suits brought by the Bank of Kentucky, Louisville Banking Company, and the Third national bank, or either of them, or that this defendant prosecuted an appeal from the judgment of the Jefferson circuit court against the Bank of Kentucky, or that either the Louisville Banking Company or the Third national bank prosecuted an appeal from the judgment of said court against this defendant, or that either of said three suits was really against the city of Louisville; or that in the court of appeals this defendant was represented by its corporation counsel, or that said counsel represented any party in either of said cases in said court or the Jefferson circuit court, except R. H. Thompson, judge of the police court of the city of Louisville, and, indirectly, said commissioners of the sinking fund, for whom he was then the regularly employed attorney, and to whom the license tax against said banks and trust companies, under the ordinance aforesaid, was made payable.

This defendant denies that it was a party to the record in the court of appeals on either of said three appeals, or as such was represented in that court by its official attorney.

This defendant states that the records in said three cases will show what questions were submitted to the circuit court and court of appeals, and what were the issues made by the pleadings and decided by each of said courts, as well as what the contentions of each party were before said courts, and this defendant denies all

statements in complainant's bill inconsistent with the records aforesaid. It is true, however, that the court of appeals, on June 1, 1895, decided on said three appeals that the license tax for the fiscal year ending August 31, 1894, fixed by the ordinance aforesaid, was invalid and not enforceable against the Bank of Kentucky, Louisville Banking Company, and the Third national bank, which had complied with the provisions of the act of March 17, 1886, and that the provisions of the constitution of the State of Kentucky, adopted September 28, 1891, and of the general revenue law, approved November 11, 1892, did not repeal the provisions of article two (2) of the Hewitt bill, with respect to said three banks, and that said three banks had an irrepealable contract with the State to pay their taxes, as provided in the Hewitt bill; and in pursuance of said decision the said judge of the police court of the city of Louisville was prohibited from taking any further steps or proceedings upon the warrants issued against said three banks and pending in said police court for carrying on a banking business during the fiscal year ending August 31, 1894, without paying the license tax, as provided in the ordinance aforesaid.

20 This defendant denies that said former adjudication constitutes a bar to any further claim by or on behalf of the city of Louisville for *ad valorem* taxes, or other taxes not involved in said actions against said three banks which instituted said actions, or a bar to any claim for *ad valorem* taxes by or on behalf of this defendant against complainant, or either of the other banks and trust companies in the city of Louisville, provided, or in the event, the court of appeals of the State of Kentucky at any time should overrule its said decision rendered on June 1, 1895, in the actions aforesaid, and decide that the banks and trust companies in said State have no such irrepealable contract, and are bound to pay taxes on their property, tangible and intangible, to the State and to the counties and municipalities in which their places of business are located, at the same rate fixed therein as against individuals and all other corporations, in accordance with the provisions of the State constitution of September 28, 1891, and said general revenue law of November 11, 1892, set forth in complainant's bill.

This defendant denies that the scheme of taxation contained in said act of November 11, 1892, impairs the obligation of complainant's alleged contract, or is, for that reason, in violation of the provision of the Federal Constitution, prohibiting a State from impairing the obligation of a contract, or that said scheme of taxation is in violation of section 181 of the State constitution, which declares that the "General Assembly shall not impose taxes for the purposes of any county, city, town, or other municipal corporation, but may, by general laws, confer on the proper authorities thereof, respectively, the power to assess and collect such taxes," and this defendant denies that the General Assembly, by the provisions of the revenue law of November 11, 1892, has imposed taxes for the purposes of any county, city, town, or other municipal corporation, and the court of appeals of the State of Kentucky has construed said section of the State constitution as meaning that the General Assembly shall not

impose or fix the *amount* or *rate* of taxes for the purposes of any county, city, town, or other municipal corporation; and has further decided, as has the Supreme Court of the United States, that the provisions of said revenue law of November 11, 1892, with respect to the assessment of the franchises, or intangible property, of corporations, companies, and associations by the State board of valuation and assessment, in the method set forth in the complainant's bill, are not violative of, but in harmony with, the constitution of the State of Kentucky.

This defendant denies that the city of Louisville claimed, or threatened at or before the institution of this action, or does now claim or threaten, or so long as said decision of the court of appeals of Kentucky, rendered June 1, 1895, referred to in the complainant's bill, remains in full force and effect, will claim the right to collect, or threaten to collect, from the complainant any tax held to be unlawful by said decision, or under the revenue law of November 11, 1892, on either an assessment by the city assessor of this defendant, or by the State board of valuation and assessment.

This defendant denies that it is now, or was at the institution of this action, threatening to collect any taxes from the complainant, upon the assessment for the years 1893 and 1894, or either of them.

This defendant denies that it will by its officers, or either of them, unless restrained by this honorable court, proceed by distraint, or otherwise, to collect said alleged illegal tax upon said alleged illegal assessments, or when it has no lawful right to do so, or that the alleged claim of this defendant, that it has the right to collect said taxes against the complainant, casts a cloud upon the complainant's alleged right to pay taxes under and in accordance with its alleged contract, or that the complainant will be subjected to much or any harassment or litigation, or unnecessary or any costs, or that complainant, or its stockholders, will be greatly or irreparably or at all injured by the alleged false claims of this defendant, or its alleged attempts by distraint or suit to collect said taxes, or that it has made or is making any false claim for taxes against the complainant, or that it has made, or is now making any attempt by distraint, suit, or otherwise, to collect any taxes from the complainant, held to be unlawful under said decision of June 1, 1895.

This defendant, for further answer and defense to complainant's bill, states that the court of appeals of Kentucky, on March 24, 1897, in the case of Deposit Bank of Owensborough *v.* Daviess County, and other bank-tax cases, wherein the same legal questions were involved and issues were made as in the three cases referred to in the complainant's bill, rendered a decision in which the former decisions of said court in said three cases delivered June 1, 1895, and in the cases of Franklin County Court *v.* Deposit Bank of Frankfort, Same *v.* Bank of Kentucky and other bank-tax cases, decided June 5, 1888, reported in 87 Ky. Rep., 370, were expressly overruled; and said court furthermore decided that no bank, State or

21 national, trust company, or other similar institution in the State of Kentucky, had or was entitled to an irrepealable contract with the State under the provisions of the Hewitt bill, or

by reason of its acceptance of, or compliance with, those provisions, and that the same, with respect to all said banks and similar institutions in the State, were repealed by the State constitution of September 28, 1891, and the general revenue law of November 11, 1892, and were bound and liable to pay State, county, and municipal taxes, and at the same rate as individuals and other corporations: that the legislature of Kentucky reserved in section six (6), article two (2) of said act of May 17, 1886, the power at will to amend or repeal the scheme of bank taxation provided for in said article of said act, which express reservation of power to amend or repeal formed a part of the contract, if any, between the State and the banks, and other similar institutions, which had accepted the provisions of said act and complied therewith; that the repeal of the Hewitt bill, with respect to the method and rate of bank taxation by the State constitution and general revenue law of November 11, 1892, did not impair the obligation of any contract with such banks, but that said repeal was only a legitimate exercise of the said reserved power in the legislature to amend or repeal; and that the acts of the legislature, adopted subsequent to February 14, 1856, amending the original charters of said four old banks, were grants to said corporations and extensions of the period of their charter existence, within the purview of the statute of February 14, 1856, referred to in the complainant's bill, and were all subject to amendment or repeal by the legislature.

This defendant states that by the concluding section of said revenue law of November 11, 1892, all acts or parts of acts in conflict therewith, including the Hewitt bill, with respect to taxation, were repealed.

This defendant states that said decision of March 24, 1897, by the rules of said court of appeals, does not become final until the expiration of thirty days, excluding Sundays, after the date of its rendition, nor until the expiration of such further time as may be given within said period by said court in which to file a petition for a rehearing, nor until such petition for a rehearing is overruled; and this defendant states that, within said period of thirty days, said court gave further time to counsel representing the banks, which were parties in said cases so decided, to wit: sixty days, excluding Sundays, from March 24, 1897, in which to file petitions for a rehearing, some of which have been filed, and said period of extension has not yet expired, nor has said decision become final.

This defendant, while disavowing any intention or purpose, on its part, to collect or attempt to collect municipal taxes from the complainant, or any other bank or trust company in the city of Louisville, held to be unlawful by said decision of the court of appeals of Kentucky, of June 1, 1895, so long as said decision is not overruled and remains in full force and effect, it avers that should said decision of said court of March 24, 1897, become final and in full force and effect, it will, in that event, as in duty bound, proceed to collect from the complainant and all other banks and trust companies, municipal taxes in accordance therewith, and as authorized by the laws of the State of Kentucky, but not otherwise.

This defendant states that the complainant has not filed its annual report for the years 1895, 1896, and 1897 with the auditor or the State board of valuation and assessment, as required by the revenue law of November 11, 1892.

This defendant denies that the existing laws of the State of Kentucky do not provide for taxing the shares of stock of the complainant as permitted by act of Congress, or that the franchise law of said State taxes the franchise granted by the Congress of the United States, or taxes its intangible property, surplus, undivided profits, and investments without lawful right to do so or contrary to the act of Congress in such cases made and provided, or that the complainant has never consented to said method of taxation, or that such consent was necessary, or that the complainant has always or at any time protested against the same as illegal or contrary to the act of Congress; and this defendant denies that said statute is repugnant to the act of Congress in such cases made and provided or because of such alleged repugnancy it is void or of no binding force as against the complainant.

This defendant denies that the capital of the four old banks was about equal to the combined capital of all the other State banks, or that the courts of Kentucky, for that reason or on any other ground held that the national banks could not be subjected to a heavier burden of taxation than said old banks, or that in view of the alleged fact that said four old banks have a capital stock about equal to the combined capital of the other State banks, the complainant is entitled to be put upon a footing as to taxation equally favored with said old banks, or cannot be taxed at a higher
22 rate than said old banks without an unjust discrimination against the complainant and other national banks, or contrary to the act of Congress.

This defendant denies that the Commonwealth of Kentucky has deliberately or at all undertaken to violate, or that it has violated, its alleged contract with the banks of said State, or any of them, or that by the voluntary action of the State the said four old banks, or either of them, have been restored to their original alleged contract right to discharge themselves from all taxation by the payment of fifty cents on each share of their stock in lieu of all other taxation, or that complainant and the other national banks of the city of Louisville, or either of them, is or would be entitled to be put upon the same footing as to taxation with said old banks.

This defendant denies that by reason of the alleged formal contract alleged to have been entered into by all the other banks and trust companies establishing the validity of said alleged contracts, they or either of them will escape local taxation, except on the houses owned by them respectively, in which they respectively do business, or that the complainant, coming in competition with said institutions, will be driven out of business if subjected to local taxation, or that any unjust or other discrimination between the complainant and said other institutions will result.

This defendant, therefore, submits that the complainant was not,

at the institution of this action, and is not now, being subjected to any false claim or claims, nor to any suit or suits, nor will it suffer irreparable or any injury, unless an injunction *pendente lite* be granted herein commanding this defendant, its officers and agents, to refrain from endeavoring by distraint, suit, or otherwise, from collecting or attempting to collect any of the taxes on assessments heretofore certified to it, based on the alleged illegal assessment of the franchise of the complainant until the further order and determination of this court.

This defendant denies that the complainant is entitled to any injunction whatever, or to any other equitable relief in this court.

Wherefore, having answered, this defendant prays that the complainant's bill be dismissed, with judgment for its costs, and for all other relief to which it in equity may appear to be entitled.

H. L. STONE,
City Attorney, Solicitor for the Defendant, City of Louisville.

STATE OF KENTUCKY, }
Jefferson County, } *sct:*

Personally appeared before me, John F. Groene, a notary public in and for the county and State aforesaid, the affiant, George D. Todd, who states he is the mayor and chief officer of the defendant City of Louisville, and the facts stated in the foregoing answer so far as stated from his personal knowledge are true, and so far as stated from information, he believes the same to be true.

GEO. D. TODD.

Subscribed and sworn to before me by said George D. Todd, mayor, this 27 day of May, 1897. My commission expires January 23, 1900.

JNO. F. GROENE,
Notary Public of Jefferson County, Kentucky.

23 And on the 28th day of May, 1897, the following order was entered:

This day came the complainant in the above-entitled cause and filed herein notice duly served on the defendant, and moved the court to grant it an injunction until the further order of the court enjoining and restraining the defendant, The City of Louisville, from taking any steps [illegible] the enforcement of the taxes set forth in the said bill of comp[illegible].

And came the said City of Louisville, by H. L. Stone, its city attorney, and objected to the said motion, and, the same coming on to be heard, was submitted, and the court, not being advised, takes time.

And at the same time this cause came on to be heard upon the demurrers, general and special, heretofore filed herein by the said City of Louisville, and the same were argued by counsel and submitted to the court, and the court, not being advised, takes time.

And on the 4th day of June, 1898, the following order was entered:

It is ordered by the court that the preliminary injunction heretofore granted in this case be, and the same is hereby, continued until the 25th day of June, 1898.

And on the 25th day of June, 1898, the following order was entered:

This day came the complainant and offered an amended bill herein; to which the defendant objected; and the court, being advised, allowed said amendment to be filed, except the 2 paragraph thereof, which the court disallowed without prejudice to the right of the complainant to raise that question in another proceeding, so far as it affected State taxes. Then came the defendant, The City of Louisville, and filed a demurrer to the amended bill, which is sustained; to which the complainant excepts.

24 Said amended bill is as follows:

Circuit Court of the United States for the Sixth Circuit and District of Kentucky.

FIRST NATIONAL BANK, Complainant,
versus
CITY OF LOUISVILLE ET AL., Defendants. } Amended Bill.

The complainant, The First National Bank, amends its bill of complaint herein, and respectfully shows to the court that on the 5th day of June, 1888, it was adjudged by the court of appeals of Kentucky that the Bank of Kentucky had a charter contract right, irrepealable in nature, and running through its extension, which does not expire until October 1st, 1909, to discharged itself of all its tax burdens, State and local, by the payment of fifty cents on each share of its capital stock.

The principal office of said Bank of Kentucky is in Louisville Kentucky. It has a capital and surplus of $2,716,550, whereas the total capital and surplus of all the national banks, seven in number, doing business in the city of Louisville is only $3,811,343.

Your orator shows that the Bank of Kentucky accepted the terms of the Hewitt law, and thereby consented to an increase of its taxation as follows:

1. An increase of from fifty cents to seventy-five cents on each share of its capital stock.

2. An additional tax for State purposes of the current rate on real estate on all its surplus over ten per cent. of the par value of its stock.

3. An additional tax for municipal purposes on the real estate owned by the bank for conducting its business.

25 One of the considerations which induced said bank to accept the provisions of the Hewitt law was to secure uniformity of taxation on capital engaged in banking business, and after that bank and all others in Louisville (except your orator, and its failure was not by design, but oversight) accepted the provisions of the Hewitt law there was in said city of Louisville equality in taxation upon all the banks of the city, and this equality remained undisturbed for

over six years, when the Commonwealth of Kentucky, having the power to preserve uniformity, which had, as aforesaid, lasted over six years, disturbed and destroyed that uniformity by the passage of the act of November 11, 1893, referred to in the original bill. The passage and attempted enforcement of said act resulted in the *the* litigation and adjudication particularly set out in the original bill, the effect of which is that other banks as well as the Bank of Kentucky, together employing the great bulk of monied capital engaged in the business of banking in the city of Louisville, is taxed only in the method provided for in the Hewitt law, hereinbefore and in the original bill set out, whereas, if your orator must pay under the law of November 11, 1893, it will have to pay in the aggregate more than three times as much as it would pay if taxed on the same principle as those banks which have contracts with the State under the Hewitt law aforesaid.

Your orator respectfully shows that this discrimination against it in favor of other capital similarly employed, brought about by the voluntary action of the Commonwealth of Kentucky, will result in the greatest injustice and oppression to it and may result in driving it out of business entirely, and your orator respectfully sub-
26 mits that it was and is the purpose of the national banking act and its amendments to protect institutions organized thereunder against such discrimination.

Your orator further shows that under the laws of Kentucky provision is made for a State board of equalization, which annually meets at the capitol of the State, at Frankfort, and there equalizes the assessments of all the real and personal property of the individual citizens of the State in the manner and on the basis hereinafter stated. Said board regularly meets each year and undertakes to carry out the provisions of said act, and especially the sections hereinafter quoted, governing the State board of equalization, and the said board has been in the habit of meeting each year for a great many years in the past. By said act it is provided as follows:

"SECTION 4274. Percentage of value to be fixed on real property—Report to county judges—Witnesses.—The said board of equalization shall fix the percentage of assessed value of real property at seventy per centum of cash value, and all counties whose average lists of real property are below such per centum shall be raised to the same, and all those counties whose average lists are above the same, shall be lowered to said standard. The secretary of the State board of equalization shall report to the various county judges of this Commonwealth, as soon as possible, the action of the board in regard to their respective counties, whereupon said judges may, in their discretion, each appoint not exceeding five witnesses to appear under oath before said board in reference to the action of the board. The board shall then revise their action, or not, as they may think just and proper. Said witnesses must appear in a reasonable time, or they shall lose their right to be heard.

27 The compensation and expenses of said witnesses, if any, shall be paid by their respective county courts."

And by said act it is further provided as to the equalization of personal property, as follows:

"SECTION 4275. Percentage of value to be fixed on personal property.—The said board of equalization shall also equalize the personal property of every county in this Commonwealth, by adding to or subtracting from the list of personal property, as the case may be, the same per centum as was added to or subtracted from the list of farm lands for the same county, and for this purpose the average per centum of assessed value to cash value of farm lands, shall be used, and in determining such per centum, fractions less than one-half shall be rejected and fractions of one-half and over shall be counted as one."

Said act provides the method of ascertaining the cash value of said real and personal property, and after thus ascertaining said cash value, all assessments are equalized on a basis of seventy per cent. of that cash value.

Said act was first adopted May 10, 1884, and has never been repealed, but has been amended from time to time, and has been each year from that time to the present enforced and carried out, especially the sections above quoted, by the said State board of equalization. Said act is entitled "An act to equalize assessments for revenue purposes and to provide for a State board of equalization."

28 The result of enforcing this statute is that the individual citizens of the State are taxed on a basis not exceeding seventy per cent. of the fair cash value of their property, while your orator, under the terms of the act of November 11, 1892, fully set out in the original bill, is taxed on the full book or apparent value of all its assets, which is much in excess or its real value, and is denied the privilege accorded to the individual citizens of the State of having the assessment of its property equalized on the basis of seventy per cent. of its cash value.

Your orator shows that it is thus denied the equal protection of the laws guaranteed by the fourteenth amendment of the Federal Constitution.

Wherefore your orator prays as in the original bill, and for all such general and equitable relief as to the court may seem proper and just under the circumstances; and your orator will ever pray.

HELM & BRUCE,
Solicitors for Complainant.

George W. Lewman says he is the president of the complainant, and that the statements contained in the foregoing amended bill are true.

G. W. LEWMAN.

Subscribed and sworn to before me by George W. Lewman this 20th day of June, 1898.

HUSTON QUIN,
Notary Public for Jefferson County, Kentucky.

My commission expires with the next session of the Kentucky legislature.

29 Demurrer above referred to is as follows:

In the Circuit Court of the United States for the Sixth Circuit, District of Kentucky.

FIRST NATIONAL BANK, Complainant,
versus
CITY OF LOUISVILLE, Defendants. } #6576. In Equity.

The Demurrer of The City of Louisville, Defendant, to the Amended Bill of Complaint of First National Bank, Complainant.

This defendant, by protestation, not confessing any or all of the matters and things in the complainant's amended bill of complaint contained to be true in such manner and form as the same is therein set forth and alleged, demurs to the said amended bill, and for cause of demurrer states:

1. That the said amended bill fails to state facts sufficient to show jurisdiction in this court.

2. That the said amended bill does not contain any matter of equity whereon this court can ground any decree or give to the complainant any relief against this defendant.

Wherefore, and for divers other good causes of demurrer appearing in the said amended bill, this defendant does demur thereto, and humbly demands the judgment of the court whether it shall be compelled to make any further or other answer to the said amended bill, and prays to be hence dismissed with its costs and charges in this behalf most wrongfully sustained.

H. L. STONE,
City Attorney, Solicitor for Defendant, City of Louisville.

30 I hereby certify, as counsel for the defendant, City of Louisville, in the foregoing demurrer, that in my opinion the same is well founded in point of law and proper to be filed.

H. L. STONE,
City Attorney, Solicitor for Defendant, City of Louisville.

STATE OF KENTUCKY, }
Jefferson County, } *sct:*

Personally appeared before me, John F. Groene, a notary public in and for the county and State aforesaid, Charles P. Weaver, who states that he is the mayor and chief officer of the defendant, City of

Louisville, and the foregoing demurrer is not interposed for delay of the cause in which it is filed.

CHAS. P. WEAVER.

Subscribed and sworn to before me by said Charles P. Weaver, mayor, this 23 day of June, 1898.

My commission expires January 23, 1900.

JNO. F. GROENE,
Notary Public, Jefferson County, Kentucky.

And on the 25th day of June, 1898, the following decree was entered :

This cause having been submitted and brought on to be heard on the complainant's motion for a temporary injunction, and on the defendant's demurrers to the bill of complaint and the amended bill of complaint, and due deliberation having been had, it is ordered, adjudged, and decreed that the complainant's said motion be, and the same is, overruled, and that the said demurrer of the defendant be, and the same *is*, sustained, and that the complainant's bill
31 of complaint as amended be, and the same is hereby, dismissed with costs to the defendant, to be taxed.

And now came the complainant and prayed an appeal in open court and tendered *their* assignment of errors; whereupon the court allows the appeal and orders the assignments of errors to be filed, and fixes the appeal bond herein as $1,000.

Assignment of errors above referred to is as follows :

Circuit Court of the United States for the Sixth Circuit and District of Kentucky.

FIRST NATIONAL BANK, Complainant,
vs.
CITY OF LOUISVILLE, Defendant. } 6576.

The complainant assigns the following as the errors of the court in the above-styled case of which complaint is made :

1. The court erred in sustaining the demurrer to the bill of the complainant.

2nd. The court erred in sustaining the demurrer to the bill of complaint as amended.

3rd. The court erred in refusing to allow paragraph two of the amendment to be filed.

4th. The court erred in holding that the complainant could be subjected to the tax of the city of Louisville under the general law when the great bulk of moneyed capital engaged in the banking business in the city of Louisville is taxed as a rate so much less onerous, amounting to not more than one-third as much as
32 the tax against complainant, if it may be taxed under the general law.

HELM & BRUCE, *For Compl't.*

And on the 25th day of June, 1898, the following agreement was filed:

Circuit Court of the United States for the Sixth Circuit and District of Kentucky.

FIRST NATIONAL BANK, Complainant,
vs.
CITY OF LOUISVILLE, Defendant. } 6576.

By agreement of the parties hereto no citation need be issued or served.

HELM & BRUCE,
Sol. for Comp't.
H. L. STONE, *City Att'y.*

Bond above referred to is as follows:

33 Circuit Court of the United States, District of Kentucky.

FIRST NATIONAL BANK OF LOUISVILLE
vs.
CITY OF LOUISVILLE.

Know all men by these presents that we, The First National Bank of Louisville, G. W. Lewman, & Charles J. Doherty, are held and firmly bound unto the City of Louisville in the sum of one thousand dollars, to be paid to the said City of Louisville, executors or administrators; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated this 21st day of November, A. D. 1898.

Whereas the above-named First National Bank of Louisville hath prosecuted an appeal to the Supreme Court of the United States to reverse the decree rendered in the above-entitled suit by the circuit court of the United States for the district of Kentucky, at Louisville:

Now, therefore, the condition of this obligation is such that if the above-named First national bank shall prosecute its said appeal to effect and answer all costs if it shall fail to make good its plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

FIRST NAT'L BANK, [L. S.]
By G. W. LEWMAN, *Pr's't.*
G. W. LEWMAN. [L. S.]
CHARLES J. DOHERTY. [L. S.]

Sealed and delivered in presence of—
THOS. SPEED.

Approved:
THOS. SPEED, *Clerk.*

34 DISTRICT OF KENTUCKY, *ss:*

I, Thomas Speed, clerk of the circuit court of the United States for the district of Kentucky, at Louisville, do hereby certify that the foregoing 33 pages contain a true and correct transcript of the record in the case mentioned in the caption hereof, as the same appears from the files and records in my said office.

Witness my hand and seal this 1st day of December, 1898.

[Seal 6th Circuit Court, Ky. Dis., U. S. of America.]

THOS. SPEED, *Clerk*,
By HENRY F. CASSIN, *D. C.*

Endorsed on cover: File No. 17,220. Kentucky C. C. U. S. Term No., 635. The First National Bank of Louisville, appellant, *vs.* The City of Louisville. Filed December 12th, 1898.